



Advisory Opinion 10-025

This is an opinion of the Commissioner of Administration issued pursuant to Minnesota Statutes, section 13.072 (2010). It is based on the facts and information available to the Commissioner as described below.

Facts and Procedural History:

On February 12, 2009, the Information Policy Analysis Division (IPAD) received a letter, dated February 3, 2009, from Mark Anfinson, an attorney, on behalf of his client, KSTP-TV. In his letter, Mr. Anfinson asked the Commissioner to issue an advisory opinion regarding KSTP's right to gain access to certain data from the Minnesota Department of Public Safety (DPS). IPAD asked Mr. Anfinson to provide additional information, which he did on October 6, 2010.

IPAD, on behalf of the Commissioner, wrote to Michael Campion, DPS Commissioner, in response to Mr. Anfinson's request. The purposes of this letter, dated October 15, 2010, were to inform him of Mr. Anfinson's request and to ask him to provide information or support for DPS's position. Mr. Newton, DPS General Counsel, responded, in a letter dated October 22, 2010.

A summary of the facts follows. In his original request, Mr. Anfinson wrote:

Sometime in the past year or so, [DPS] apparently learned that, due to a court system computer error, there had been a significant delay in reporting to DPS certain criminal convictions that under state law require suspension or cancellation of the offender's driving privileges. After the oversight was discovered, DPS did obtain the names of the offenders, and began notifying them that their driver's licenses were being suspended or cancelled, even though this would not occur until months or even years after the convictions had been entered.

Last fall, a client of mine requested access to the names of the affected drivers who were being notified by DPS as a result of the computer glitch. DPS denied the request. I then contacted DPS to pursue the request, contending that the information sought by my client was public, or at least accessible to journalists, under explicit provisions of state and federal law.

In response, I received a letter from [Mr. Newton.] He again rejected the request for access, citing Minn. Stat. §171.12 and portions of the federal Drivers' Privacy Protection Act (DPPA), specifically 18 U.S.C. §2721. Mr. Newton maintained that the names of drivers are 'protected' under federal law, and that only '[i]f you have a name and required identifiers' will 'the data that is public' be produced.

Mr. Newton wrote to the Commissioner:

The matter originated when a reporter from KSTP submitted a request . . . for ‘the names of individuals whose driving privileges have been affected by the re-pass conviction information received by [DPS.]’ In essence, the request was for the identity and conviction information on certain drivers, which specifically includes names of drivers. [DPS] responded . . . denying access to the data pursuant to state and federal law.

As an initial matter, be advised that [DPS] does not maintain such data. The courts, upon learning of a computer problem, sent approximately 4,000 traffic citations to DPS for processing. These citations should have come to DPS much sooner but had not because of the court computer error. The citations were then entered on the record of the cited individuals. Approximately 1,600 citations involved charges that resulted in the suspension or cancellation of driving privileges. These approximately 1,600 citations . . . were not segregated into any list or separate category; the citation was entered, the record was read, a letter was sent and that was noted on the record as well. There is no segregated list or pile of letters that can be disseminated. Requiring [DPS] to comply with the original request would require an individual to go through all 4000 records, determine which were ‘repass’ violations, then determine if that was the violation which resulted in cancellation or suspension, and develop a separate list. [DPS] is under no obligation to create data it does not have.

If however, the Department of Administration insists on requiring [DPS] to create data it does not have, be advised that federal and state law protect names of drivers under the [DPPA and Minnesota Statutes, section 171.12.] State law requires that data provided by individuals to obtain a driver’s license should be treated as provided by federal law. . . . Federal law classifies the data as private with regards to discretionary public uses. Based on this law it is [DPS’s] practice not to release names of drivers. The fact that the request is for a specific grouping of individuals does not allow for an abdication of [DPS’s] responsibility under the federal law to protect these drivers’ names.

Issue:

Based on Mr. Anfinson’s opinion request, the Commissioner agreed to address the following issue:

Did the Minnesota Department of Public Safety (DPS) comply with Minnesota Statutes, Chapter 13, in responding to a data request for the “names of individuals whose driving privileges have been affected by the re-pass conviction information received” by DPS?

Discussion:

Pursuant to Minnesota Statutes, Chapter 13, government data are public unless otherwise classified. (Minnesota Statutes, section 13.03, subdivision 1.) Section 13.03, subdivision 1 also requires government entities to maintain government data “in such an arrangement and condition as to make them easily accessible for convenient use.”

Pursuant to DPPA, DPS is generally prohibited from disclosing to the public certain “personal information,” defined as information that identifies an individual, including a photograph, social security number, name, address, etc., but does not include information on “vehicular accidents, driving violations, and driver's status.” (See 18 U.S.C. § 2725(3).) In addition, under Minnesota

Statutes, section 171.12, if DPS determines that a use of data governed by DPPA is related to “motor vehicle or driver safety or theft the commissioner (of DPS) shall disclose the data.” According to Mr. Newton, DPS has not made that determination, and therefore takes the position that the data, i.e., driver’s names, are private. Mr. Newton did state to Mr. Anfinson that if he “ha[d] a name and required identifiers, the data that is public . . . will be produced.”

Mr. Anfinson and Mr. Newton discussed at length their disagreement on the proper application of federal and state law. According to Mr. Anfinson:

In addition my client is a news organization, and therefore benefits from the exception to the privacy rules found in 18 U.S.C. §2721(b)(14). That provision allows disclosure of even protected personal information where the intended use ‘is related to the operation of a motor vehicle or public safety.’ The exception is codified in Minn. Stat. §171.12, subd. 7(a), which contains the exact language used in the DPPA. . . .

As you may know this exception has long been interpreted and applied by Driver and Vehicle Services Division of DPS as authorizing news media access to otherwise private data about persons who have Minnesota driver’s licenses. The legislative history of the statute clearly supports this practice.

Neither Mr. Newton nor Mr. Anfinson provided relevant legislative history to the Commissioner. In his response to Mr. Anfinson on the issue of a “media exception” to the general rule, Mr. Newton wrote, “[b]ecause the name cannot be released under federal law we do not need to address the ‘exception’ you cite”

The Commissioner was not provided information that enables her to make a determination on this point; however, she respectfully disagrees that the issue before her requires a resolution of that disagreement.

Minnesota Statutes, section 171.12, subdivision 7(a), provides: “[d]ata on individuals *provided to obtain a driver’s license* or Minnesota identification card shall be treated as provided by United States Code, title 18, section 2721 [DPPA], as in effect on May 23, 2005, and shall be disclosed as required or permitted by that section.” (Emphasis added.)

The requested data, i.e., conviction data that the courts transmitted to DPS resulting in DPS suspending or cancelling drivers’ licenses, are not data governed by section 171.12 (data individuals provided to DPS to obtain a license.) Therefore, the data sent to DPS from the courts are not classified under section 171.12, and are presumptively public. (See also Minnesota Statutes, section 13.03, subdivision 4(e).)

There is, however, a question whether DPS maintains the data it received from the courts that KSTP requested. Mr. Newton stated that DPS “does not maintain such data,” and also that “all decisions and transactions taken can be fully tracked.” He also said that DPS would have to create data in order to provide KSTP with access. That seems to suggest that DPS can retrieve the relevant data, albeit at some cost to DPS. Mr. Newton stated correctly that Chapter 13 does not obligate government entities to create data. However, as the Commissioner has opined numerous times, government entities are obligated to provide the public with access to public data, even if the entity has not maintained the data such that they are easily accessible for convenient use. (See Advisory Opinions 00-011, 10-016 and 10-018.)

In addition, Minnesota Statutes, section 15.17, provides that government entities must keep records “necessary to a full and accurate knowledge of [the entity’s] official activities.” Whether the courts maintain those data is outside the purview of Chapter 13 (see Minnesota Statutes, section 13.90.) DPS is required to maintain data that document its official actions.

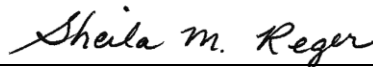
DPS should maintain a copy of data provided by the court for a full and accurate knowledge of its official actions to suspend or revoke a driver’s license. The problem appears to be in the manner in which DPS maintains the data about driving violations and driver’s status. DPS apparently comingles driver license application data with data that it does not obtain in connection with a license application, such as driver violation and status data, and treats all the data as protected under DPPA because that’s the original record in its database. It is the Commissioner’s opinion that DPS has the authority and the obligation to release the re-pass conviction data, regardless how it is currently maintaining the data.

Opinion:

Based on the facts and information provided, the Commissioner’s opinion on the issue Mr. Anfinson raised is as follows:

The Minnesota Department of Public Safety (DPS) did not comply with Minnesota Statutes, Chapter 13, in responding to a data request for the “names of individuals whose driving privileges have been affected by the re-pass conviction information received” by DPS.

Signed:



Sheila M. Reger
Commissioner

Dated:

November 23, 2010